

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

*Replacement of IPER
dated 28.05.200*
PCT

To:

BAILEY WALSH & CO
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NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT

(PCT Rule 71.1)

Date of mailing
(day/month/year)

06.09.2004

Applicant's or agent's file reference

AT-SAR 9353-PCT

IMPORTANT NOTIFICATION

International application No.

PCT/GB 03/02519

International filing date (day/month/year)

11.06.2003

Priority date (day/month/year)

13.06.2002

Applicant

NANGLA, Kiren

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

- 8 SEP 2004

Name and mailing address of the international
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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference AT-SAR 9353-PCT		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/GB 03/02519	International filing date (day/month/year) 11.06.2003	Priority date (day/month/year) 13.06.2002	
International Patent Classification (IPC) or both national classification and IPC D06Q1/04			
Applicant NANGLA, Kiren			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 9 sheets, including this cover sheet.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of 21 sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input checked="" type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand 08.12.2003		Date of completion of this report 06.09.2004	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80293 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Okunowski, J Telephone No. +49 89 2399-8975	

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

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I. Basis of the report

1. With regard to the elements of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17):*

Description, Pages

1-21 filed with telefax on 05.05.2004

Claims, Numbers

1-46 as originally filed

Drawings, Sheets

1/1 as originally filed

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

see separate sheet

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 1-4,13-16

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☒ the claims, or said claims Nos. 1-4,13-16 are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Yes: Claims	26-28, 32, 33, 36, 37, 43, 44
	No: Claims	5-12, 17-25, 29-31, 34, 35, 38-42, 45, 46
Inventive step (IS)	Yes: Claims	
	No: Claims	26-28, 32, 33, 36, 37, 43, 44
Industrial applicability (IA)	Yes: Claims	5-12, 17-46
	No: Claims	

2. Citations and explanations

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see separate sheet

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EXAMINATION REPORT - SEPARATE SHEET

Item I.5

- 1 Claim 1 as filed with Applicants' telefax dated 05.05.2004, is defined to be a method including, on the one hand, manipulation of the coated fabric with the stretching being sufficient to propagate thread or fibre rupture or breaking of at least part of the base fabric and breaking or tearing of the coating layer to irreversibly alter the structure of the finished coated fabric. Thus, features of this method are breaking, tearing or rupture of both base fabric fibres and coated fabric, and the irreversible nature of the stretching operation. Original claim 27, taken together with original page 6, lines 15-17 could perhaps be considered to disclose this definition in the application as originally filed. This definition is referred to as feature A hereinafter.

On the other hand, claim 1 also defines that the stretching is such that further stretching of the finished coated fabric increases the visibility of either the base fabric or the one or more coating layers to a user viewing the fabric depending on whether the fabric is stretched in a substantially transverse or substantially longitudinal direction. This definition is referred to as feature B hereinafter.

For feature B, no exactly corresponding passage could be found in the application as originally filed. Moreover, even if one were to accept that pages 15 and 16 would at least implicitly disclose feature B, there is no clear and unambiguous disclosure in the application as originally filed of the combination of feature B with the rest of present claim 1, which includes feature A. The reason for this is that the application as originally filed embraced both reversible stretching (page 3, lines 12-14) and irreversible stretching (feature A, see above). There is no pointed in the application as originally filed linking feature B with irreversible stretching (feature A).

Claim 1 as filed with Applicants' telefax dated 05.05.2004, as well as page 3 of the description filed therewith, represents therefore an amendment of the application in such a way that it contains subject-matter which extends beyond the content of the application as originally filed (Article 34(2)(b) PCT). As the other claims filed with said telefax all depend on this claim 1, or refer to it, this objection extends to all of the claims thus filed. Thus, pursuant to Rule 70.2(c) PCT, claims 1-24 filed with as filed with Applicants' telefax dated 05.05.2004, and the deletion of claims 25-46, are ignored for the purposes of this IPER, which is duly based on claims 1-46 as originally filed.

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- 2 On page 17 of the description, the value of 19 micron has twice been changed into 12 micron. However, it was not clear from the application as filed that the value of 19 micron was erroneous. Even less so, it was immediately clear that the value should have been 12 micron. This change is therefore an amendment, for which no basis could be found in the application as originally filed, and therefore represents an amendment of the application in such a way that it contains subject-matter which extends beyond the content of the application as originally filed (Article 34(2)(b) PCT).

Documents cited:

Reference is made to the following documents:

- D1: printout of Internet site
www.hiking-site.nl/materialen_ervaringen_kleding.php, pages 1 and 7
D2: EP-A-0 304 351
D3: PATENT ABSTRACTS OF JAPAN vol. 1998, no. 09, 31 July 1998 (1998-07-31) & JP 10 102387 A (DEMACHI MUTSUOKO), 21 April 1998 (1998-04-21) -
& JP 10 102387 A (DEMACHI MUTSUOKO) 21 April 1998 (1998-04-21)
D4: DE-A-33 41 028

The document D1 was not cited in the international search report.

Item III

The subject-matter of claims 1 and 2 comprises, in fact, any type of textile, since "appearance" covers any type of visual perception (the way things look). Any textile material is capable of being stretched reversibly, at least to a minor extent. This is true especially for classical knitwork, such as knit woollen pullovers (or knit pullovers of cotton or acrylics, for that matter). Upon stretching, textiles will be deformed (change of appearance), and, moreover, the yarn distance is visibly altered (another change of appearance). The most favourable stretching direction is predetermined by the textile structure (for instance, of the knitting).

The subject-matter of present claims 1-4, and of many other claims, thus lacks novelty over apparel belonging to the public prior art (Article 33(2) PCT). However,

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this objection arises mainly because the wording of the present claims is much broader than is warranted by the present description. Firstly, the term "appearance" seems to be too broad to fit the phenomenon the Applicants seem to have in mind. Secondly, the present claims cover any kind of textile, even floor covering (carpets) or geotextiles, but the textiles in the present description all seem to belong to the category of apparel (it is however up to the Applicants to find a delimitation which would satisfy Article 34(2)(b) PCT). Thirdly, the change of appearance actually described by the present description is **always** one in which the change is brought about by the interaction of the textile material and a coating layer applied thereto (note also that independent process claim 17 is limited thereto). Other appearance changes are therefore not made available by the present application.

The subject-matter of present claims 1-4, 13-16 lacks therefore support by the description for their whole ambit, i.e. insofar as they go beyond the scope of present claim 5 (Article 6 PCT).

Item V**1 Interpretation**

1.1 The term "gauge", as used in claim 9, is not an S.I.-unit (Rule 10.1(e) PCT).

1.2 Claims 14, 23, 24, 35, 45 try to define the textile material in terms of warp and weft, which are terms who have meaning for wovens and certain types of knitwork only. As these claims are however not limited to such fabrics (but even include things like nonwovens), and "warp" has no meaning for weft-knits and "weft" not for warp-knits, these claims lack clarity (Article 6 PCT) and have no distinctive merit.

1.3 The definition of a stretching force to be applied to the coated fabric is of little delimitative use in the absence of any indications as to the fabric dimensions, as it is tension which matters, not force. Claims 29 and 30 have therefore no delimitative value, and are superfluous (Article 6 PCT, conciseness).

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- 1.4 Two independent claims for the same product category (claims 1, 46) is excessive (Rule 6.1(a) PCT, Article 6 PCT, conciseness).
- 1.5 The number of 46 claims seems to be unjustifiably high (Rule 6.1(a) PCT, Article 6 PCT, conciseness).
- 2 In view of the broadness of the term "appearance" and the non-distinctive nature of other features (see the observations in Item III afore), the subject-matter of present claim 5, which does not define that the change in appearance is **linked** to the coating, embraces pullovers with Windstopper® linings (a lining is embraced by the general terms "foil" and "coating"), on the market since the nineties. The last fact is illustrated by D1 (a website on which hikers exchange their experiences with hiking apparel), in which it is stated with date of 06.02.2003, on page 7, entry "Dale of Norway/dronning maud", that 7 years before that date (i.e. in 1996), a Windstopper®-lined pullover was bought, i.e. was publicly available. Such pullovers were woollen. 28 Gauge seems to be a standard setting in knitting (see D2).

The availability of such pullovers long before the priority date of the present application is therefore prejudicial to the novelty of the subject-matter of present claims 1-9, 11, 14, 15, 16 (Article 33(2) PCT).

A same objection can be raised against these claims on the basis of D4 (see the claims therein).

- 3 D2 discloses, in column 2, line 48 to column 3, line 57 a knitwear of polyester, which has been coated with a silver-coloured coating. It has been steam-treated under tension (a manipulation to alter the structure of the coated knitwear) to suppress the shine appearance, and then printed with a brilliant golden coating (also a manipulation to alter the structure of the coated knitwear). Of course, like conventional knitwear, this knitwear will change in appearance upon stretching, a stretching which is reversible.

The disclosure of D2 is therefore prejudicial to the novelty of the subject-matter of claims 1-12, 14, 15, 16, 17, 18, 20-25, 29-31, 35, 38, 40-42, 45, 46 (Article 33(2)

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PCT).

- 4 D3 discloses a woven fabric which has been coated with a gold foil. Then, the gold foil is slit (manipulated to alter the coated fabric's structure, but this is also the application of a pattern), which will make its change in appearance even more obvious than with ordinary wovens. The slitting reduces the bonding between adjacent sections of the gold foil to zero. The disclosure of D3 is prejudicial to the novelty of the subject-matter of claims 1-9, 11, 12, 14-16, 17-25, 29-31, 34, 35, 38, 39, 41, 45, 46 (Article 33(2) PCT).
- 5 The distinguishing features of claims 13, 26-28, 32, 33, 36, 37, 43, 44 do not seem to be related to a surprising technical effect offering a solution to the problem addressed by this application, and these claims do therefore not involve an inventive step (Article 33(3) PCT).